



**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

**The following constitutes the order of the Court.**

**Signed July 6, 2006**

  
**United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE:

SUMMER BREEZE PARTNERS, LP,

DEBTOR.

§  
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§

Case No. 05-80312-BJH-11

Hearing Date: June 28, 2006

Hearing Time: 1:15 P.M.

**ORDER ON MOTION FOR AUTHORITY TO SELL PROPERTY  
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES TO  
WESTEND HOLDINGS, LLC**

On June 28, 2006, came on to be considered the **Motion to Sell Property Free and Clear of Liens, Claims and Encumbrances to Westend Holdings, LLC** (the “Motion”) filed on June 2, 2006 (Docket No. 61) by Summer Breeze Partners, L.P., Debtor-in-Possession (the “Debtor”). This Court has considered the Motion, the Responses thereto described below, and the representations of counsel, and based thereon, is of the opinion, finds and concludes that:

1. This Court has jurisdiction of the Motion pursuant to 28 U.S.C. § 1334 and this is a core proceeding pursuant to 28 U.S.C. §157.

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2. Pursuant to Bankruptcy Rule 6004(c), proper notice was given to all creditors, lienholders and parties in interest and that no responses or objections to the Motion or the proposed sale were filed other than the Response to Motion to Sell Property Free and Clear of Liens Claims & Encumbrances to Westend Holdings, LLC by Harvey Giddens (Docket No. 67; the “Giddens Response”) and Oda’s Response to Debtor’s Motion to Sell Property Free and Clear of Liens Claims & Encumbrances to Westend Holdings, LLC by Harunori Oda (Docket No, 66; the “Oda Response”) .

It is therefore

**ORDERED** that the relief requested in the Motion is hereby granted to the extent and in the manner provided for herein; and it is further

**ORDERED** that the order entered by this Court on May 30, 2006 [Docket No. 60] be and is hereby voided and declared of no force and effect; and it is further

**ORDERED** that Summer Breeze (also referred to below as the “Seller”) be and is hereby authorized to sell the real property known as “SUMMER BREEZE APARTMENTS” located at 2202 SOUTHLAND STREET, DALLAS, DALLAS COUNTY, TEXAS, which is more particularly described as follows (hereafter referred to in the aggregate as the “Property”):

(a) the tract of land (the “Land”) located in Dallas County, Texas, being described more fully as:

Tract II, Parcel A: Being situated in the City of Dallas, Block B/1765 of Southern Terrace Addition No. 4, an addition to the City of Dallas, Dallas County, Texas according to the Plat recorded in volume 38, page 87, Map Records Dallas County, Texas, the same property as Tract II, Parcel A described in a Special Warranty Deed from Gary Dean Cothrum to Summer Breeze Apartments, L.P., and recorded at Volume 2000129, Pages 1978 to 1984, Deed Records, Dallas Co., TX.

Tract II, Parcel B: Being situated in the City of Dallas, Block C/1765 of Southern Terrace Addition No. 4, an addition to the City of Dallas, Dallas County, Texas according

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to the Plat recorded in volume 38, Page 67, Map Records, Dallas County, Texas, the same property as Tract II, Parcel B described in a Special Warranty Deed from Gary Dean Cothrum to Summer Breeze Apartments, L.P. and recorded at Volume 2000129, Pages 1978 to 1984, Deed Records, Dallas Co., TX.

Tract III: Being Lots 1 – 12 inclusive in Block A/1765, Lots 13, 14, 15 and 18 in Block 4/1764, Lots 6, 7 and 8 in Block B/1956, Lots 6, 7 and 8 in Block B/1957 and lots 14 through 22 inclusive in Block 7-9/1958 of Southern Terrace No. 3, an Addition to the City of Dallas, Dallas County, Texas according to the Map recorded in Volume 17, Page 161 of the Map Records of Dallas County, Texas

together with

- (b) all buildings, improvements, and fixtures;
- (c) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (d) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (e) Seller's interest in all licenses and permits related to the Property;
- (f) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (g) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- (h) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations

to **WESTEND HOLDINGS, LLC** (the "Purchaser"), pursuant to the terms and provisions of the Commercial Contract-Improved Property that was attached to the Motion, and as amended thereafter by Addendum 1, Dated 5/30/06, and Addendum II, Dated 6/7/06 (collectively, the "Contract"), for TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) (\$600,000.00 cash and \$1,400,000.00 of seller financing), free and clear of any and all liens, claims and encumbrances, including, but not limited to:

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1. Any claims or assertions that the deed from Lupe Valdez, Sheriff of DALLAS County, Texas to J. G. Cooper Development, Inc., dated January 7, 2005, filed January 31, 2005, recorded in Volume 2005020, Page 44 of the Real Property Records of DALLAS County, Texas is a fraudulent transfer under Bankruptcy law and/or Texas Creditor's law.
2. Notice of Lis Pendens styled Harvey Giddens, as Plaintiff, versus Tracy Ishino Associates and Summer Breeze Apartment, L.P., as Defendant, dated December 22, 2003, filed December 22, 2003, recorded in/under Volume 2003252, Page 5516 of the Real Property Records of DALLAS County, Texas, under Cause Number 03-13074-K, 192nd Court, DALLAS County, Texas.
3. Mechanic's Lien by Affidavit executed by Oak Hollow Management, L.L.C. against Summer Breeze Apartments, L.P., in the amount of Three Hundred Nineteen Thousand Seven Hundred Twenty and 25/100 (\$319,720.25), filed December 29, 2003, recorded in/under Volume 2003256, Page 4675 of the Real Property Records of DALLAS County, Texas (the "Oak Hollow Lien").
4. Abstract of Judgment against Summer Breeze Apartments, L.P. by Republic Waste Services of Texas, Ltd. in the amount of Thirty Two Thousand Seven Hundred Eighty One and 09/100 (\$32,781.09), plus attorney's fees, interest and costs, filed September 24, 2004, recorded in/under Volume 2004185, Page 1255 of the Real Property Records of DALLAS County, Texas, and as affected by Sheriff's Deed dated January 7, 2005, filed January 31, 2005, recorded in Volume 2005020, Page 44 of the Real Property Records of DALLAS County, Texas.
5. Abstract of Judgment against Summer Breeze Apartments, L.P. by Reliable Paving, Inc. in the amount of Sixty Three Thousand Seven Hundred Seventy Five and 00/100 (\$63,775.00), plus attorney's fees, interest and costs, filed April 21, 2003, recorded in/under Volume 2003075, Page 8040 of the Real Property Records of DALLAS County, Texas (the "First Reliable Paving Lien").
6. Abstract of Judgment against Summer Breeze Apartments, L.P. by Reliable Paving, Inc. in the amount of Forty Seven Thousand Five Hundred and 00/100 (\$47,500.00), plus attorney's fees, interest and costs, filed September 28, 2004, recorded in/under Volume 2004188, Page 6179 of the Real Property Records of DALLAS County, Texas (the "Second Reliable Paving Lien").
7. Abstract of Judgment against Summer Breeze Apartments, L.P. by Billie Jean Willis in the amount of Seventeen Thousand Nine Hundred Fifty Eight and 57/100 (\$17,958.57), plus attorney's fees, interest and costs, filed March 31, 2004, recorded in/under Volume 2004062, Page 10028 of the Real Property Records of DALLAS County, Texas. Notice of Lis Pendens styled Billie Jean Willis, as Plaintiff, versus Summer Breeze Apartments, L.P., Summer Breeze Partners, L.P. and JG Cooper Development, Inc., as Defendants, dated July 13, 2005, filed July 13, 2005, recorded in/under Volume 2005135, Page 6619 of the Real Property Records of DALLAS County, Texas, under Cause Number 05-05333-B, County Court at

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Law No. 2 Court, DALLAS County, Texas (said Abstract of Judgment and Notice of Lis Pendens are hereinafter collectively referred to as the “Willis Lien”).

8. Abstract of Judgment against Tracy Ishino and Summer Breeze Apartments, L.P. by Harvey Giddens in the amount of One Million Two Hundred Twelve Thousand Three Hundred Eighty and 00/100 (\$1,212,380.00), plus attorney’s fees, interest and costs, filed March 3, 2006, recorded in/under County Clerk's No. 200600078436 of the Real Property Records of DALLAS County, Texas.
9. Deed of Trust executed by Summer Breeze Partners, L. P. to Tracey M. McGaughy, Trustee, dated March 1, 2005, filed March 4, 2005, recorded in/under Volume 2005044, Page 6397 of the Real Property Records of DALLAS County, Texas, securing JG Cooper Development, Inc. in the payment of one note in the principal sum of Seventy Five Thousand and 00/100 (\$75,000.00), due and payable and bearing interest as therein provided; said Note being additionally secured by a Vendor’s Lien retained in Deed, executed by JG Cooper Development, Inc. to Summer Breeze Partners, L.P., dated March 1, 2005, filed March 4, 2005, recorded in/under Volume 2005044, Page 6381 of the Real Property Records of DALLAS County, Texas; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument (said liens are hereinafter collectively referred to as the “Cooper Development Lien”).
10. Deed of Trust executed by Summer Breeze Partners. LP to N. Alex Bickley, Trustee, dated March 3, 2005, filed June 3, 2005, recorded in/under Volume 2005108, Page 15737 of the Real Property Records of DALLAS County, Texas, securing Sartaj Bains in the payment of one note in the principal sum of Sixty Three Thousand Three Hundred Thirty Three and 00/100 (\$63,333.00), due and payable and bearing interest as therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.
11. Deed of Trust executed by Summer Breeze Partners, LP to N. Alex Bickley, Trustee, dated March 3, 2005, filed June 3, 2005, recorded in/under Volume 2005108, Page 15755 of the Real Property Records of DALLAS County, Texas, securing Edward Grinnell in the payment of one note in the principal sum of Sixty Three Thousand Three Hundred Thirty Three and 00/100 (\$63,333.00), due and payable and bearing interest as therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.
12. Deed of Trust executed by Summer Breeze Partners, LP to N. Alex Bickley, Trustee, dated March 3, 2005, filed June 3, 2005, recorded in/under Volume 2005108, Page 15772 of the Real Property Records of DALLAS County, Texas, securing William Daly in the payment of one note in the principal sum of Sixty Three Thousand Three Hundred Thirty Three and 00/100 (\$63,333.00), due and payable and bearing interest as therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.

13. Deed of Trust executed by Summer Breeze Partners, LP to N. Alex Bickley, Trustee, dated March 3, 2005, filed June 3, 2005, recorded in/under Volume 2005108, Page 15784 of the Real Property Records of DALLAS County, Texas, securing Sartaj Bains in the payment of one note in the principal sum of Sixty Thousand and 00/100 (\$60,000.00), due and payable and bearing interest as therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.
14. Deed of Trust executed by Summer Breeze Partners, LP to N. Alex Bickley, Trustee, dated March 3, 2005, filed June 3, 2005, recorded in/under Volume 2005108, Page 15790 of the Real Property Records of DALLAS County, Texas, securing William Daly in the payment of one note in the principal sum of Twenty Five Thousand and 00/100 (\$25,000.00), due and payable and bearing interest as therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.
15. Deed of Trust executed by Summer Breeze Partners, LP to N. Alex Bickley, Trustee, dated March 3, 2005, filed June 3, 2005, recorded in/under Volume 2005108, Page 15796 of the Real Property Records of DALLAS County, Texas, securing Edward Grinnell in the payment of one note in the principal sum of Twenty Five Thousand and 00/100 (\$25,000.00), due and payable and bearing interest as therein provided; and all the terms, conditions and stipulations contained therein, including, but not limited to, any additional indebtedness, if any, secured by said instrument.
16. Mechanic's Lien by Affidavit executed by The Envirotrol Co., Inc. against Summer Breeze Apts., L.P., in the amount of Seven Hundred Fifty Five and 12/100 (\$755.12), filed March 14, 2005, recorded in/under Volume 2005051, Page 443 of the Real Property Records of DALLAS County, Texas.
17. All *ad valorem* property tax liens for the year 2005 and prior years;  
*provided, however,* that the Contract is hereby modified and amended such that the Purchaser shall *not* take the Property free and clear of liens claims or encumbrances that presently exist or may arise from, or as a result of that certain Notice of Lis Pendens styled the City of Dallas, as Plaintiff, versus Summer Breeze Apartments, L.P., as Defendant, dated August 16, 2004, filed August 20, 2004, recorded in/under Volume 2004161, Page 6651 of the Real Property Records of DALLAS County, Texas, under Cause Number 04-04855, District Court, DALLAS County,

Texas (the “2004 Dallas Lis Pendens”), as evidenced by the execution of this Order below by the Purchaser; and it is further

**ORDERED** that, any and all liens, claims and encumbrances currently against the Property, other than those that presently exist or may arise from, or as a result of the 2004 Dallas Lis Pendens, shall attach solely to the proceeds from such sale and the title to the Property shall be conveyed by the Seller free and clear of the same; and it is further

**ORDERED** that the Seller and/or the title insurance agency/escrow officer closing the sale be and hereby is AUTHORIZED and ORDERED to make payment from the sale proceeds after payment by of all ordinary and customary closing costs, to (1) the holders of all *ad valorem* property tax liens against the Property for the year 2005 and prior years in amounts sufficient to fully discharge such liens, and (2) real estate agent Steve Bennett of Around Town Homes, the sum of \$21,000.00, representing the initial cash portion of the real estate commission to be paid by the Debtor (with a final payment of \$49,000.00 to be paid by the Debtor upon the payment of the \$1,400,000.00 balance of the purchase price for the Property (pursuant to Exhibit “D” of the Contract); and it is further

**ORDERED** that no claims other than those listed in the preceding paragraph shall be paid absent further order of this court after any required determination of liens, interests and claims against the proceeds from the sale; and it is further

**ORDERED** that the 2006 *ad valorem* property tax lien is expressly retained on the subject Property until the payment by the Purchaser of the 2006 taxes, plus any penalties, attorney’s fees and interest which may ultimately accrue thereon, in the ordinary course of business; and it is further

**ORDERED** that the Seller is authorized to sign any and all necessary documentation to carry out the sale and convey full title to the Purchaser, including the special warranty deed; and it is further

**ORDERED** that the Seller, the Purchaser and the title company/escrow officer closing the sale are hereby AUTHORIZED and DIRECTED to take all other reasonable and necessary actions to consummate the sale and transfer of the Property from the bankruptcy estate to the Purchaser including the execution of all other reasonable and necessary documents and instruments of amendment, revision, assignment, transfer and sale that are appropriate to implement and consummate the sale of the Property to the Purchaser pursuant to this Order and the intent of the Motion (including reasonable extensions of the closing date).

**### END OF ORDER ###**

**ACKNOWLEDGED, ACCEPTED AND AGREED:**

WESTEND HOLDINGS, LLC

/s/ Ron Almeida  
By: \_\_\_\_\_  
Ron Almeida, Manager

**~~### END OF ORDER ###~~**

Prepared by:

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